

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, September 7, 2017 3:45 PM
To: Tracy, Mary
Subject: FW: Proposed Rule of Evidence 413

For you

ATTENTION COURT FILERS: The Supreme Court and the Court of Appeals now have a web portal to use for filing documents. Beginning July 3, 2017, all electronic filing of documents in the Supreme Court should be through the web portal. We will accept your attached document for filing, but you should immediately follow the directions below to register for and begin using the appellate courts web portal for all future filings.

Here is a link to the website where you can register to use the web portal: <https://ac.courts.wa.gov/>
A help page for the site is at: <https://ac.courts.wa.gov/index.cfm?fa=home.showPage&page=portalHelp>
Registration FAQs: <https://ac.courts.wa.gov/content/help/registrationFAQs.pdf>
Registration for and use of the web portal is free and allows you to file in any of the divisions of the Court of Appeals as well as the Supreme Court. The portal will automatically serve other parties who have an e-mail address listed for the case. In addition, you will receive an automated message confirming that your filing was received.

From: Berger, Adam [mailto:berger@sgb-law.com]
Sent: Thursday, September 7, 2017 3:39 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Rule of Evidence 413

Susan L. Carlson, Clerk
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504

Dear Ms. Carlson

I am writing in support of the proposed new Evidence Rule 413.

For the past 18 years, my practice as an attorney has focused on representation of injured plaintiffs and of workers who have been denied their lawful wages by unscrupulous employers. In both types of cases, I have encountered individuals whose ability to pursue their legal rights has been impaired by fear that they may face detainment or deportation based on their immigration status if they pushed forward with their claims. In some cases, individuals have decided not to proceed with their claims because of fear that they would be forced to reveal their immigration status during the civil discovery process. In other cases, individuals have felt compelled to limit their damage claims, accept discounted settlements, and/or avoid trial for the

same reasons. These individuals have rightly feared not just the possible legal consequences of being compelled to disclose their immigration status, but the unwarranted and prejudicial impact that such disclosure might have – consciously or unconsciously – on judges and juries deciding their cases. I have also seen the adverse effects on the orderly administration of justice that arise from fights over the discoverability and admissibility of such evidence. Even where we have succeeded in protecting such information from discovery, it has often only been at the cost of significant time, expense, and delay in the litigation, and at the cost of additional emotional distress and uncertainty to our clients.

Proposed ER 413 would be a significant step forward in remedying these evils in the civil justice system. Our tort laws and wage laws are designed to protect all individuals, regardless of immigration status. Adoption of a rule that confirms the irrelevance of immigration status in most civil cases will help ensure that the beneficial goals of these laws are achieved for everyone. If an undocumented worker is encouraged to assert his rights under the wage laws, free from fear, it levels the playing field and promotes payment of proper wages for all workers. If an undocumented individual can bring claims for injury arising from defective products or unsafe work sites, it improves the safety of all people.

At the same time, ER 413 provides that immigration status is admissible, subject to appropriate safeguards, when it is truly relevant or necessary to protect the constitutional rights of parties.

ER 413 will help realize the fundamental promise of our system to provide justice for all, including (and especially) the most vulnerable.

Thank you for the opportunity to provide these comments.

Regards,
Adam J. Berger

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